

Caroline N. Watson
General Counsel-South Carolina



Suite 821
1600 Hampton Street
Columbia, South Carolina 29201
803 748-8700
Fax: 803 254-1731

March 5, 1999



The Honorable Gary E. Walsh
Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Generic Docket to Establish the Issue of IP Telephony
Protocol
Docket No. 98-651-C

Dear Mr. Walsh:

Please find enclosed for filing the original and ten copies of BellSouth Telecommunications, Inc.'s Response to Motion to Forebear from Decision or For Scheduling Order filed by the Southeastern Competitive Carriers Association in the above-referenced matter.

By copy of this letter, I am providing all parties of record with a copy of this response.

Sincerely,

A handwritten signature in black ink that reads "CN/Watson".

Caroline N. Watson

CNW/jbm

cc: Parties of Record

RETURN DATE: _____
SERVICE: OK

into believing that they are all one and the same. They are not.

IP telephony is not the Internet nor is it traffic sent to an Internet service provider ("ISP") for the purpose of accessing information or data on the World Wide Web or the Internet ("ISP traffic"). IP telephony is also not an "enhanced service," which includes "information service". In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, § 102 (rel. Dec. 24, 1996). Rather, IP telephony is nothing more and nothing less than "plain old long distance telephone service." See "The Internet's New Clothes," Opinion-Editorial by Albert Halprin, former Chief of the Common Carrier Bureau, prepared June 1998, attached hereto as Exhibit 1.

In "phone-to-phone IP telephony," a person picks up a telephone and dials a telephone number of another person, who picks up a telephone as a result of that call having been made, and those individuals talk; that is a telephone call.¹ The difference between an IP telephony telephone call and a

¹ Similar communications can also take place between facsimile machines or similar equipment simply by dialing a telephone number. For long distance calls, the caller must provide a Personal Identification Number ("PIN") as one would when using a calling card or dial-around number for a long distance call.

traditional telephone call is the "protocol" by which the message is being transmitted. A protocol is an electronic language used to transmit signals between points in a network. Every long distance call is transmitted using one protocol or another. See Exhibit 1. The protocol used in a traditional telephone call may be digital carrier protocol, while the protocol used in IP telephony is Internet protocol. The fact that the same protocol is used to provide an information service (Internet) as is used to provide a telecommunications service (IP telephony) does not make the telephone call using that protocol something other than a telephone call, as SECCA would have this Commission believe.

"Telecommunications" is defined in the Telecommunications Act of 1996 ("the Act") as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." "Telecommunications service" is defined in the Act as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." Id. at § 153(46) (emphasis added).

The Act defines "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available

information via telecommunications." 47 U.S.C. § 153(20). In its definition of "information service," the Act specifically excludes "any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." Id.

Phone-to-phone IP telephony is the transmission between two points of a voice communication that is not changed in form or content as sent or received and, therefore, is "telecommunications" under the Act. 47 U.S.C. § 153(43). When that telecommunications is offered directly to the public for a fee, it is a "telecommunications service" under the Act. 47 U.S.C. § 153(46). It is not, and does not fit the definition of, an information service. See 47 U.S.C. § 153(20).

Regardless of what protocol or set of rules is utilized in formatting and timing the message exchange between the two communicating points of a telephone call, that telephone call is still a telecommunications service when offered to the public for a fee. If it looks like a telephone call, acts like a telephone call, and talks a telephone call, then it is a telephone call. It is not the Internet, ISP traffic, or an enhanced or information service. SECCA acknowledges that the FCC has already held that "phone to phone IP telephony services lack the characteristics that would render them information services within the meaning of the statute, and instead bear the

characteristics of telecommunications services." SECCA Motion, p. 13. The Commission should not be fooled by SECCA's tactic to lump IP telephony with Internet information services.

B. SECCA's Motion to Forebear Should Be Denied.

SECCA argues that this Commission should "forebear" a decision in this docket because regulation of IP telephony by the states is premature. SECCA Motion, p. 2. BellSouth agrees no decision is necessary from this Commission for reasons other than those submitted by SECCA, as BellSouth has set forth below, but does not agree this is an issue that the FCC must decide.

The background as to how this docket was opened is relevant to the motion now before this Commission. The Commission opened this docket on January 12, 1999, in response to a request by VoiceMagic, Inc., in Docket 98-413-C. See Motion to Dismiss the South Carolina Telephone Association as an intervenor, and to Strike the Prefiled Testimony of Jerry Hendrix, filed November 23, 1998, Docket 98-413-C, ¶ 15. VoiceMagic's request was the result of testimony filed in that docket regarding VoiceMagic's application to operate as a reseller of intrastate interexchange telecommunications services in South Carolina. In its application, VoiceMagic indicated its plans to market "Voice Over Internet Protocol technology." See Application of Voicemagic, Inc. and Voicemagic Telecommunications, Inc., Docket 98-413-C, p. 7. The South Carolina Telephone Association

("SCTA") filed the testimony of Jerry Hendrix expressing its concern that VoiceMagic may be attempting to avoid purchasing appropriate intrastate tariffed services in the provision of IP telephony service to its customers based on past experience with VoiceMagic in a prior proceeding. See SCTA's Return to Motion to Dismiss the South Carolina Telephone Association as an intervenor, and to Strike the Prefiled Testimony of Jerry Hendrix, Docket 98-413-C, p. 2 ("SCTA Return"). In that previous proceeding, this Commission ordered VoiceMagic to purchase appropriate tariffed services from certificated carriers once it became certified. PSC Order No. 98-490, p. 17. The SCTA wanted to establish in Docket 98-413-C VoiceMagic's intent to abide by that order and to purchase appropriate access services from incumbent local exchange carriers ("ILECs") in the provision of IP telephony. SCTA Return, p. 4. The Commission struck those portions of Mr. Hendrix's testimony that dealt with IP telephony, and opened this docket in response to VoiceMagic's suggestion that a generic docket would be appropriate. Interestingly, VoiceMagic has not intervened in this docket.

The telecommunications service at issue in this docket is not purely an interstate service. It is only the intrastate IP telephony services that are to be addressed by this Commission. There is no reason why this Commission should wait on the FCC before rendering a decision on intrastate telecommunications

services. BellSouth already has in place Commission-approved access tariffs that apply to such services. For this reason, BellSouth believes it is not necessary for the Commission to hold a hearing to decide an issue that has already been decided. Intrastate interLATA/intraLATA calls using IP telephony are telecommunications services, as set forth supra. Those calls are already regulated by this state. Intrastate interLATA/intraLATA services are subject to the access charges in BellSouth's lawfully filed and approved access tariffs. Therefore, there is no need for this Commission to forebear a decision until the FCC acts.

BellSouth cannot reiterate strongly enough that IP telephony is "plain old long distance telephone service," and is not the Internet as SECCA would have this Commission believe. SECCA Motion, pp. 2-4. The Internet and IP telephony are two separate and distinct services. Phone-to-phone IP telephony is the use of Internet protocol to enable real-time voice transmission. SECCA Motion, p. 5. When these transmissions are intrastate long distance calls and occur through the use of a telephone on one or both ends of the transmission, access charges apply. These calls are not traffic sent to an ISP for the purposes of accessing information or data on the Internet. Phone-to-phone IP telephony services undisputedly from a "functional" standpoint "bear certain characteristics of

telecommunications services," rather than information services. SECCA Motion, p. 13.

Because South Carolina already has tariffs in place which address this traffic, there is no need to wait for the FCC to rule on IP telephony. There is no reason to forebear any policy decision concerning IP telephony used in South Carolina for intrastate intraLATA/interLATA calls where a telephone is used on either one or both ends of the call.

Contrary to SECCA's claim that there is no way to identify or distinguish IP telephony from Internet usage, that is simply not the case. Phone-to-phone IP telephone calls require separate telephone lines and gateways and cannot be transmitted by calling an ISP telephone number. The only time it would be difficult to make some distinction would be in a situation where the call is being made from one computer to another computer over the Internet. BellSouth is not claiming that those calls fall within its access tariffs. However, if those calls are made via telephone on either one or both ends of the call, then the access charges would apply to that end and the IP telephony provider or IXC providing the service should be ordering those lines from BellSouth through its access tariffs. From that point forward, the minutes of use for the IP telephony calls would be provided in the same form or fashion as any other toll telephone call for the purpose of imposing access charges.

C. No National Policy Regarding IP Telephony Is Required to Address the Matters in this Docket.

BellSouth is not proposing that the Internet be subject to access charges. It is proposing that BellSouth's access tariffs apply to telephone calls that utilize Internet protocol. Such application of access charges is not contrary to any national policy. The Internet is an interactive computer service that provides the user with the ability to interact and retrieve stored data. See generally 47 U.S.C. § 230 (refers to the Internet and "other interactive computer services") (emphasis added): The Internet is an information service that offers the capability for "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20). SECCA uses the term "Internet" generically throughout its motion as if that term includes telecommunications services that are offered through the use of internet protocol. It does not. The Act specifically excludes "telecommunications service" from the definition of "information service." Id.

SECCA effectively admits that what is at issue herein is "telecommunications services." SECCA Motion, p. 8. The fact that a portion of the telecommunications services are being transmitted by way of a new form of delivery, or protocol, does not change what those services are.

While the FCC has determined that all "information services" are encompassed within "enhanced services," such is not the case with "telecommunications service." SECCA Motion, p. 10. SECCA again tries to confuse the issue by stating that enhanced service providers ("ESPs"), including ISPs, have been exempted by the FCC from paying access charges.² SECCA Motion, p. 10. The Commission should remember that IP telephony is not an enhanced service or information service, therefore, any exemption applicable to those services is not appropriate for or applicable to IP telephony. SECCA's further discussion about ESPs and ISPs not being required to pay access charges and that the FCC declined to require a contribution to the Universal Service Support Mechanisms by entities other than "telecommunications carriers" is not dispositive of this case. The traffic at issue is not Internet traffic, it is not ESP nor ISP traffic. It is telecommunications service carried by a telecommunications carrier. 47 U.S.C. § 153(44) ("any provider of telecommunications services"). The FCC's notice of inquiry referred to by SECCA in its motion, regards the future of information service and Internet usage, not IP telephony. SECCA Motion, p. 11.

² The FCC has exempted enhanced and information services from access charges, not the providers of those services.

Finally, if IP telephony providers of intrastate long distance telephone service were excluded from paying appropriate access charges, the result may be steep increases in local telephone rates.³ See Exhibit 1.

D. SECCA's Proposed Scheduling Order

BellSouth has no objection to the hearing in this case being postponed. In fact, as stated above, BellSouth does not see the necessity for the Commission to have a hearing on this matter since BellSouth's tariffs already address the issue. If the Commission believes a hearing in this matter would be helpful and necessary, however, BellSouth will participate at the time the Commission decides the matter should be heard.

BellSouth objects to SECCA's proposed scheduling order to the extent the order calls for briefs on the initial issue of whether and to what extent it is necessary for the Commission to engage in further proceedings in this docket. It is respectfully submitted that SECCA's motion and any responses thereto will provide all interested parties an opportunity to address that issue.

CONCLUSION

IP telephony is "plain old long distance telephone service" covered by BellSouth's existing access tariffs. Therefore,

³ SECCA's actions are understandable. Interexchange carriers have for years tried to convince regulators to lower access charges and allow them to avoid contributing to universal service obligations.

there is no need for this Commission to either forebear from any policy decisions concerning IP telephony nor is there any reason for the Commission to proceed further. IP telephony is not the Internet, it is a protocol used to provide telecommunications services. It is not ISP traffic, an information service, or an enhanced service. Should the Commission determine it is interested in holding further hearings, BellSouth has no objection to a postponement of the hearing in this matter, but does not believe briefs are necessary on the initial issue as to whether the Commission should move forward.

Respectfully submitted,



Caroline N. Watson
Robert A. Culpepper
BellSouth Telecommunications, Inc.
Suite 821 - 1600 Hampton Street
Columbia, South Carolina 29201
(803) 253-5953

William J. Ellenberg II
Mary K. Keyer
BellSouth Telecommunications, Inc.
Suite 4200 - BellSouth Center
675 West Peachtree St., N.E.
Atlanta, Georgia 30375
(404) 335-0729

ATTORNEYS FOR BELL SOUTH

March 5, 1999

The Internet's New Clothes

Albert Halprin

The latest fad in the telecommunications industry is "Internet telephone service," which supposedly cuts the cost of long distance calling in half. In the United States, Wall Street and the Internet community are all treating Internet telephony as a major innovation with huge potential, if only it can be kept free of the grasping control of regulators.

Internet telephony is still only a blip in the \$100 billion U.S. telecommunications services market. But the rapid growth of U.S. Internet telephony providers like IDT Corp., Qwest and Delta 3 is sparking interest in Europe and around the world.

Before the fervor for this supposed panacea to the scourge of excessive long distance telephone rates spreads, someone should point out that this latter-day emperor has no clothes. So-called Internet telephony is just plain old long distance telephone service, nothing more and nothing less.

In the tale of "The Emperor's New Clothes," scheming tailors tell the emperor his new clothes are made of cloth so fine that it looks invisible to all but those sophisticated enough to appreciate its quality. The emperor and his loyal minions are all so afraid of appearing ignorant that the emperor winds up walking around naked.

The enterprising schemers who have set up shop as Internet telephony providers are hoping that Net-naïve policymakers, dazzled by the magic word "Internet," will give them bags of gold for their invisible cloth.

Indeed, the Internet telephony companies are asking the U.S. government to create a special subsidy program for them.

They want the government to exempt them from the charges that all other long distance telephone companies pay to help support universal, affordable telephone service in the United States.

Giving Internet telephony this huge break would be bad policy and bad for the Internet.

When a U.S. telephone subscriber makes a long distance call, his long distance carrier pays about two cents a minute to your local phone company for use of its network to start the call, and about the same amount to the local phone company at the other end to complete the call. These fees are called "access charges" in the U.S. and interconnection rates in Europe.

Today, the Internet telephony companies are not paying these fees.

To use these companies' services, you dial into a "local access" number from any

Exhibit 1

telephone, then enter an account code and the phone number of the person you are trying to reach. You pay by the minute for the call.

It's exactly the same as a calling card call -- on which access charges normally are due. But instead of paying access charges, the Internet telephony providers pay local business telephone rates for their local access numbers, as if they were ordinary business customers instead of carriers.

Other long distance carriers could do the same thing -- if they wanted to violate FCC rules that require them to pay an access charge for the use of the local telephone network to carry long distance calls.

Some Internet telephony companies also avoid contributing financially to the Universal Service Fund, which is used by the FCC to subsidize telephone service in rural and other high-cost areas. All other long distance companies contribute a percentage of their revenues to the fund.

These are the reasons -- the only reasons -- why Internet telephony companies are able to offer long distance service from any telephone in the U.S. to any other telephone in the U.S. for five cents a minute, or about half the best rate offered by traditional long distance companies.

The Internet telephony providers' PR spin is that their service is cheaper because they save money by routing their calls over the Internet.

In fact, these services often cost *more* to provide than traditional long distance services, because they require more switching and more processing. That's why Internet telephony companies are pushing so hard for this subsidy -- without it, they couldn't compete against traditional long distance carriers' higher-quality, lower-cost services.

Internet telephony advocates also claim their service is special and should be treated differently from other long distance services because it uses the "IP" protocol -- short for "Internet Protocol" -- to transmit calls.

The correct response to that is, so what?

A protocol is an electronic language used to transmit signals between points in a network. Every long distance call is transmitted using one protocol or another.

There's nothing special or better about the IP protocol. And the *absolute last thing* the government should be doing is picking or favoring one technology over another.

Finally, the Internet telephony companies say this issue is a test of the government's commitment to "keeping the Internet regulation-free."

Exhibit 1

The best policy to protect the Internet from government control is one that makes no distinctions based on whether a long distance company routes its calls partly over the Internet or otherwise. If identical services are treated identically, carriers will be free to route their calls as they choose, with no government intrusion on the Internet.

Like all other long distance companies, Internet telephony providers use the local telephone network at both ends of every call they carry. They should pay the same amount to use it as all other long distance carriers.

The correct level for access or interconnection charges is a subject of intense debate in the U.S., as in Europe. But there is no good reason to exempt one "special" group of long distance carriers from paying them.

If Internet telephony providers are allowed permanently to avoid paying interconnection charges, on the spurious ground that Internet telephony is somehow different, this is what will happen:

- ° Other long distance carriers, seeking also to avoid access charges, will claim to be Internet telephony providers. To qualify, they may use the IP protocol, even if it would be more efficient to use another protocol. Since the only real difference between the traditional carriers and the Internet telephony providers is what they call themselves, this shift would take place virtually overnight.
- ° The result will be the rapid erosion of telephone companies' access or interconnection revenues, to compensate for which the phone companies will have to increase rates where possible. Raising the interconnection charges imposed on those long distance carriers that are still paying them will not be an option, since this would only drive these carriers to Internet telephony even faster. The only thing left will be to increase local telephone rates steeply.

Internet telephony is just another form of plain old long distance service. Like the invisible cloth in the children's story, there's nothing there. Subsidizing Internet telephony makes no sense at all.

* * *

Albert Halprin is a partner at the Washington law firm of Halprin, Temple, Goodman & Sugrue, and a former senior official at the FCC.

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Jeanette B. Mattison, who, being duly sworn, deposes and says, that she is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused BellSouth's Response to Motion to Forebear from Decision or For Scheduling Order Filed by the Southeastern Competitive Carriers Association in Docket No. 98-651-C to be served by placing such in the care and custody of the United States Postal Service, with first-class postage affixed thereto and addressed to the following this March 5, 1999:

F. David Butler, Esquire ✓
General Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211

Mr. Stan Bugner ✓
GTE South Incorporated
Suite 825
1301 Gervais Street
Columbia, South Carolina
(GTE)

Margaret Fox, Esquire ✓
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(SCTA/SCTC)

Elliott F. Elam, Jr., Esquire ✓
SC Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250-5757
(Consumer Advocate)

Helene J. Courard ✓
State Regulatory Attorney
4250 North Fairfax Drive
12th Floor
Arlington, Virginia 22203
(Quest)

Russell B. Shetterly, Esquire ✓
Haynsworth Marion McKay & Guerard, L.L.P.
1201 Main Street, Suite 2400
Columbia, South Carolina 29202
(e.spire)

Francis P. Mood, Esquire ✓
Sinkler & Boyd, P.A.
The Palmetto Center
1426 Main Street, Suite 1200
Columbia, South Carolina 29201-2834
(AT&T)

Frank R. Ellerbe, II, Esquire ✓
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, South Carolina 29202
(SECCA & MCI & SCCTA)

Karlyn Stanley, Esquire ✓
Cole, Raywid & Braverman, L.L.P.
Second Floor
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006-3458
(SCCTA)

B. Craig Collins, Esquire ✓
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(Mindspring Enterprises)

Bruce D. Jacobs, Esquire ✓
Fisher Wayland Cooper Leader
& Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D. C. 20006-1851
(VON Coalition)


Jeanette B. Mattison